



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
One Blackburn Drive
Gloucester, MA 01930-2298

AUG 23 2005

Paul J. Howard
Executive Director
New England Fishery Management Council
50 Water Street
Newburyport, MA 01950

Dear ~~Mr.~~ Howard:

This letter responds to your August 2, 2005 letter requesting information relating to parameters that affect harbor porpoise bycatch in the Massachusetts Bay Closure Area under the Harbor Porpoise Take Reduction Plan (HPTRP), as well as a re-evaluation of its necessity as a complete closure during the month of March.

In your letter, you correctly cited the rationale for which a complete closure is surrounded by longer time/area closures where pingers are required. As noted in the final rule implementing the HPTRP (63 FR 66464, December 2, 1998), this strategy was developed to account for the interannual variability in harbor porpoise distribution and changes in fishing effort. Massachusetts Bay was proposed to be closed during the month of March because this was the time of year during which most known takes in the region were recorded. This closure is surrounded by pinger requirements from December through May to further reduce harbor porpoise takes during the spring. NOAA's National Marine Fisheries Service (NMFS) continues to support this rationale for Massachusetts Bay and other HPTRP regulated areas.

Prior to implementation of the HPTRP, observer data indicated that the mean annual harbor porpoise mortality in the Northeast sink gillnet fishery from 1994 to 1998 was 1163 animals. In addition to that total, 358 takes were attributed to the Mid-Atlantic coastal gillnet fishery during that time period. At that time, the potential biological removal (PBR) level for harbor porpoises was 483; therefore, PBR was being exceeded. According to the most recent assessment of this stock, after implementation of the HPTRP the mean annual harbor porpoise mortality in the Northeast sink gillnet fishery was significantly reduced to 277 animals, and 33 animals in the Mid-Atlantic coastal gillnet fishery. During this time period, PBR was set at 747 animals. Although the HPTRP has reached its short-term goal of reducing serious injury and mortality to well below PBR levels, we have not yet achieved the HPTRP's long-term goal of reaching a zero mortality rate goal (ZMRG), which is 10% of PBR, as required by the Marine Mammal Protection Act.

Based on information in the annual marine mammal stock assessments, NMFS acknowledges that the Gulf of Maine/Bay of Fundy stock of harbor porpoises has grown since implementation of the HPTRP, and that PBR has been adjusted as a result. Despite the growth of the stock as well as the implementation of measures to reduce takes in the gillnet fishery, we are not achieving ZMRG. Monitoring of the Northeast sink gillnet fishery revealed that compliance in closure areas and in the use of pingers is low.



According to fishery observer information that was presented to the Atlantic Scientific Review Group (ASRG) at its December 2004 meeting, 80% of observed gillnet trips (173 out of 217) in Northeast pinger regulated areas were non-compliant in 2003, with regard to the presence or absence of pingers on observed hauls. In the Massachusetts Bay Closure Area, observers documented 15 trips during the month of March when the area is closed to gillnets. One harbor porpoise mortality was observed in this area during March in a gillnet string that was not equipped with pingers. Gillnet gear was also observed to be non-compliant (no pingers present) during trips in January (12), February (32), May (3), and December (32). Consequently, the lack of compliance with both the pinger requirement and the Massachusetts Bay Closure Area is hindering the HPTRP from achieving its ZMRG.

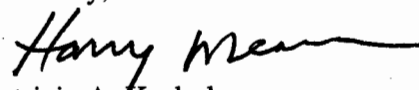
To address the compliance issues, NMFS has funded additional at sea enforcement to emphasize the importance of addressing the lack of compliance with the HPTRP regulations. My staff is working through our Joint Enforcement Agreements (JEAs) with our state partners as well as the U.S. Coast Guard to develop an enforcement strategy for the HPTRP pinger and closure requirements. In addition, in each of the last two years my staff has sent small entity compliance guides to gillnet vessel owners/operators each of the past two years, reminding them of the pinger requirements and March closure of Massachusetts Bay under the HPTRP.

In your letter, you requested information relating to the number and locations of harbor porpoises taken in gillnets. As noted above, a similar analysis may have already been conducted by the Northeast Fisheries Science Center's (NEFSC) Protected Species Branch. Therefore, I feel that it is more appropriate for your Plan Development Team (PDT) to work directly with its NEFSC representatives to further investigate this data request. The NEFSC staff representing the PDT can coordinate with the Protected Species Branch to provide you with the specific information that is germane to your request.

At this time, NMFS does not believe that a re-evaluation of the complete closure of Massachusetts Bay under the HPTRP during March is warranted. Relaxing a requirement by allowing the use of pingers in lieu of a complete closure is not justified since the long-term ZMRG has not yet been achieved, and non-compliance with the HPTRP requirements, including the Massachusetts Bay Closure Area, continues to be an issue.

Thank you for your interest in matters related to protected resources.

Sincerely,


Patricia A. Kurkul
Regional Administrator

cc: F/NER3 – Colligan, Gouveia, Johnson
F/NER2 – Darcy
F/NEC – Merrick
F/PR2 – Payne